

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

INDIRA BOWEN, Individually, and  
INDIRA BOWEN, on behalf of her minor  
children, RAYLYN FAIRCLOUGH and  
MIA BOWEN,

Plaintiffs,

v.

THE COUNTY OF WESTCHESTER,  
TOWN OF GREENBURGH, POLICE  
OFFICERS JOHN DOES 1-10, in their  
individual and official capacities,

Defendants.

Civil Action No.: 07 CIV 6277

**ANSWER**

Defendant, TOWN OF GREENBURGH, by and through its attorneys, Callahan & Fusco, LLC, as and for its Answer to plaintiffs' Verified Complaint, responds upon information and belief as follows:

**NATURE OF THE ACTION**

1. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "1" of the Verified Complaint and refers all questions and interpretations of law to the court.

**PRELIMINARY STATEMENT**

2. Defendant denies the allegations contained in paragraph "2" of the Verified Complaint and refers all questions and interpretations of law to the court.

**JURISDICTION**

3. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "3" of the Verified Complaint.

**VENUE**

4. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "4" of the Verified Complaint.

**PARTIES**

5. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "5" of the Verified Complaint.

6. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "6" of the Verified Complaint.

7. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "7" of the Verified Complaint.

8. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "8" of the Verified Complaint.

9. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "9" of the Verified Complaint.

**FACTS**

10. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "10" of the Verified Complaint.

11. Defendant denies the allegations contained in paragraph "11" of the Verified Complaint and refers all questions and interpretations of law to the court.

12. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "12" of the Verified Complaint.

13. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "13" of the Verified Complaint.

14. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "14" of the Verified Complaint.

15. Defendant denies the allegations contained in paragraph "15" of the Verified Complaint and refers all questions and interpretations of law to the court.

16. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "16" of the Verified Complaint.

17. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "17" of the Verified Complaint.

18. Defendant denies the allegations contained in paragraph "18" of the Verified Complaint and refers all questions and interpretations of law to the court.

19. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "19" of the Verified Complaint.

20. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "20" of the Verified Complaint.

**AS AND FOR AN ANSWER TO THE FIRST CAUSE OF ACTION**

21. Defendant repeats, reiterates, and realleges each and every answer contained in Paragraphs 1-20 of this Answer with the same force and effect as if set forth more fully at length herein.

22. Defendant denies the allegations contained in paragraph "22" of the Verified Complaint and refers all questions and interpretations of law to the court.

23. Defendant denies the allegations contained in paragraph "23" of the Verified Complaint and refers all questions and interpretations of law to the court.

24. Defendant denies knowledge or information sufficient to form a belief as

to the truth of the allegations contained in paragraph "24" of the Verified Complaint.

**AS AND FOR AN ANSWER TO THE SECOND CAUSE OF ACTION**

25. Defendant repeats, reiterates, and realleges each and every answer contained in Paragraphs 1-24 of this Answer with the same force and effect as if set forth more fully at length herein.

26. Defendant denies the allegations contained in paragraph "26" of the Verified Complaint and refers all questions and interpretations of law to the court.

27. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "27" of the Verified Complaint.

**AS AND FOR AN ANSWER TO THE THIRD CAUSE OF ACTION**

28. Defendant repeats, reiterates, and realleges each and every answer contained in Paragraphs 1-27 of this Answer with the same force and effect as if set forth more fully at length herein.

29. Defendant denies the allegations contained in paragraph "29" of the Verified Complaint and refers all questions and interpretations of law to the court.

30. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "30" of the Verified Complaint.

**AS AND FOR AN ANSWER TO THE FOURTH CAUSE OF ACTION**

31. Defendant repeats, reiterates, and realleges each and every answer contained in Paragraphs 1-30 of this Answer with the same force and effect as if set forth more fully at length herein.

32. Defendant denies the allegations contained in paragraph "32" of the Verified Complaint and refers all questions and interpretations of law to the court.

33. Defendant denies the allegations contained in paragraph "33" of the Verified Complaint and refers all questions and interpretations of law to the court.

34. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "34" of the Verified Complaint.

**AS AND FOR AN ANSWER TO THE FIFTH CAUSE OF ACTION**

35. Defendant repeats, reiterates, and realleges each and every answer contained in Paragraphs 1-34 of this Answer with the same force and effect as if set forth more fully at length herein.

36. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "36" of the Verified Complaint.

37. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "37" of the Verified Complaint.

**AS AND FOR AN ANSWER TO THE SIXTH CAUSE OF ACTION**

38. Defendant repeats, reiterates, and realleges each and every answer contained in Paragraphs 1-37 of this Answer with the same force and effect as if set forth more fully at length herein.

39. Defendant denies the allegations contained in paragraph "39" of the Verified Complaint and refers all questions and interpretations of law to the court.

40. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "40" of the Verified Complaint.

**AS AND FOR AN ANSWER TO THE SEVENTH CAUSE OF ACTION**

41. Defendant repeats, reiterates, and realleges each and every answer contained in Paragraphs 1-40 of this Answer with the same force and effect as if set forth more fully at length herein.

42. Defendant denies the allegations contained in paragraph "42" of the Verified Complaint and refers all questions and interpretations of law to the court.

43. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "43" of the Verified Complaint.

44. Defendant denies the allegations contained in paragraph "44" of the Verified Complaint and refers all questions and interpretations of law to the court.

45. Defendant denies the allegations contained in paragraph "45" of the Verified Complaint and refers all questions and interpretations of law to the court.

46. Defendant denies the allegations contained in paragraph "46" of the Verified Complaint and refers all questions and interpretations of law to the court.

47. Defendant denies the allegations contained in paragraph "47" of the Verified Complaint.

48. Defendant denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "48" of the Verified Complaint.

**AS AND FOR AN ANSWER TO THE EIGHTH CAUSE OF ACTION**

49. Defendant repeats, reiterates, and realleges each and every answer contained in Paragraphs 1-48 of this Answer with the same force and effect as if set forth more fully at length herein.

50. Defendant denies the allegations contained in paragraph "50" of the Verified Complaint and refers all questions and interpretations of law to the court.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

The Verified Complaint fails to set forth a cause of action upon which relief may be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

The applicable law, statute or regulation, including but not limited to the Statute of Limitations, controlling or requiring the institution of suit within a certain period of time following its accrual, was not complied with by the claimants, and accordingly, plaintiffs' action is barred as a matter of law.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

Plaintiffs have failed to join all persons and/or entities necessary for the just adjudication of this action.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

Any and all actions complained of were performed by the answering defendant in conformance with the laws and Constitutions of the United States and New York and the Town of Greenburgh Police Department's rules and regulations, which permitted the search of plaintiffs' residence.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

Any conduct which is alleged by plaintiffs is *de minimis* and insubstantial and as such the allegations fail to establish a claim under 42 U.S.C. Section 1983.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

The actions complained of were caused in whole or in part by culpable conduct and actions attributable to the plaintiffs including contributory negligence and/or illegal activities and that by reason thereof, the amount of damages recoverable, if any, shall be diminished in whole or in part by that portion to which plaintiffs' culpable conduct bears on the alleged conduct of the answering defendant which allegedly caused the damages.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

Any acts allegedly performed by the answering defendant were protected by qualified immunity and/or privilege as provided by law.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

The answering defendant denies that it committed any culpable acts as alleged in the Complaint other than to properly search plaintiffs' residence; if, however, it is determined that the answering defendant did commit culpable acts as alleged in the Complaint, then all such acts were committed and performed in good faith and without malice and with reasonable and probable cause and in the performance of its duties and obligations.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

The Town of Greenburgh did not promulgate or permit any official municipal policy, practice, or custom which resulted in the deprivation of plaintiffs' Constitutional rights.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

The defendant is not a proper party to this action, and thus, the Verified Complaint should be dismissed.



**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

To the extent that plaintiffs have received reimbursement for all or a part of the damages claimed, plaintiff should be stopped from asserting the same herein.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE**

While any liability is expressly denied, any search, detention, or entry was based on a valid search warrant, and as such, no liability can attach to the defendant.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE**

While liability is expressly denied, any action taken on behalf of the defendant, concerning the Verified Complaint, was not grossly negligent or reckless, and as such, no liability can attach.

**AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE**

At all times, the Town of Greenburgh lawfully and properly maintained a police department as provided under and by the laws of the State of New York and, as part of their obligations, the Town's police officers were obligated pursuant to applicable laws to detect and suppress crime and to apprehend violators of the laws of the State of New York.

**AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE**

The Town of Greenburgh denies committing any culpable acts as alleged in the Verified Complaint other than to properly search plaintiffs' residence; if, however, it is determined that culpable acts did occur, all acts performed by the Town of Greenburgh in the hiring, training, supervising and assigning of its employees were performed in good faith with reasonable care and without malice.

**AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE**

No private right of action exists for violations of the New York State Constitution where a plaintiff has alternative damage remedies available, as plaintiff does here under her § 1983 claims.

**AS AND FOR AN SEVENTEENTH AFFIRMATIVE DEFENSE**

The defendant cannot be liable under a theory of *respondeat superior* as a matter of law.

**WHEREFORE**, the defendant Town of Greenburgh prays judgment that the complaint of the plaintiffs be dismissed, together with the costs and disbursements of this action and attorney's fees awarded to the defendant.

Dated: East Hanover, New Jersey  
October 10, 2007

Callahan & Fusco, LLC  
Attorneys for Defendant  
TOWN OF GREENBURGH

By: 

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